

## Maryland Agricultural Land Preservation Program

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### PAYMENT OPTIONS FOR SELLING AN AGRICULTURAL PRESERVATION EASEMENT

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This Fact Sheet describes the three payment options available when you sell an easement to the Maryland Agricultural Land Preservation Foundation (MALPF).

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#### Payment Options

When you are made an offer to purchase an easement on your property, you must choose how you wish to be paid: either the entire amount at closing ("lump-sum"), annual installment payments over two to 10 years, or a new option of an installment purchase agreement over 10 to 30 years.

1. "Lump-sum" Payment Option. This payment option is simply the payment of the full amount of the offer at settlement.
2. Installment Payment Option. This option is available for settlement by taking payments in equal amounts over 2 to 10 years. You may elect to take a certain amount at the time of settlement, and divide the remainder of the offer equally to be paid annually over the subsequent years. The funds not taken at settlement but to be paid as annual installments are invested in certificates of deposit at the interest rate in effect on the day of deposit. Each installment includes interest minus one-quarter of one percent of the interest earned to cover the administrative costs of the Treasurer's Office. This payment option is typically used by landowners seeking to spread the impact of this taxable event over more than one year.
3. Installment Purchase Agreement (IPA) Option. This option is new to the MALPF program in fiscal year 2008. An IPA is a two-part contract between you and the Maryland Agricultural and Resource Based Industry Development Corporation (MARBIDCO). One part of the contract is the payment of the principal (the balance of the offer unpaid at settlement) at the end of the period of the agreement. The second part of the contract is a semi-annual interest payment during the period of the agreement. MARBIDCO's IPA will be offered in 5-year increments from a minimum of 10 years to a maximum of 30 years. In other words, an IPA would be for a period of 10, 15, 20, 25 or 30 years. If the county in which the property is located has a local installment purchase agreement program that you find more attractive than that offered by the State, you may discuss the possibility of settling using your county's IPA program, rather than the State's IPA program. For more information on using a county IPA program for settlement rather than the State's IPA program, please contact your county's farmland preservation program administrator.

To qualify for an IPA, the total amount of the IPA must be \$100,000 or more. You will be required to take a certain amount of the principal at settlement to

protect the tax-free status of the interest payments. Generally, the amount required to be taken at settlement will be based on the maximum payback value of any retained development rights on the property, though an additional amount may be required if any other potential issues are identified on the property that may require a future payback to the Foundation. Thus, if you retain and are eligible for three family lots, and the per acre value of your easement is \$3,500, you will be required to take at least \$21,000 of the principal at settlement. The minimum amount required to be paid at settlement is calculated as follows:

Payback per acre:		\$3,500
Maximum acres per dwelling right:	x	2
Maximum retained dwelling rights:	x	3
Amount required to take at settlement:		<u>\$21,000</u>

The IPA payment option offers the following potential benefits to landowners:

- a. It offers a predictable tax-exempt stream of income during the period of the agreement.
- b. It provides the possibility for sellers who would be subject to significant capital gains taxes to delay recognition of the gain and payment of those taxes until the end of the period of the agreement.
- c. An IPA pays tax-exempt interest on the full amount of the principal. Were an easement seller to take the same amount out as a lump-sum payment at settlement and invest that money, the amount invested would be the amount left after the payment of capital gains taxes and, most likely, the returns on the investment would be taxable.
- d. An IPA can provide an attractive inheritable financial instrument to help in estate planning. Please note that multiple IPAs can be requested to help in estate planning if each meets the minimum requirement of \$100,000.

The Foundation strongly recommends that you consult with a tax professional before you choose your payment option and complete the option contract. The amount paid to you at closing and any subsequent interest or principal payments are based on the amount you specified in the option contract unless acreage adjustments are made or certain payments are required by the payment option you have chosen. The form of the Installment Payments Agreement will be made available to you and/or your tax professional on request. Before closing, MARBIDCO will provide an opinion of bond counsel that the interest payments from an IPA are exempt from federal and state income taxes.

If you decide to make a change in your payment option after submitting the option contract, the settlement process stops until you initial and return a revised schedule. If a change were to take place after the settlement check is ordered, the check must be stopped and a new check ordered for the revised amount. This will take additional time. Because of the high administrative costs associated with the installment purchase agreement option, if you have chosen the installment purchase agreement option and subsequently decide on an alternative payment option, you may be liable for the expenses incurred by the Foundation in drawing up the agreement. As the settlement date approaches, you may no longer have the option to change your payment choice. To avoid delays in settlement, **please review your payment needs and the tax consequences at your earliest**

**convenience.** If, after you have sent in the option contract, you discover the need to revise the payment option or schedule, notify the Foundation immediately.

Please note that, due to constraints posed when State bond and/or Federal funds are used, the choice to use the installment payment option or the installment purchase agreement option may be limited or carry certain conditions for offers made by the Foundation containing bond and/or Federal funds. If you receive such an offer, you will be informed of any limitations or conditions that apply.

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*PLEASE NOTE: The Assistant Attorney General who acts as legal counsel to the Foundation and the Assistant Attorney General for the Department of General Services are employed to serve the interests of the State of Maryland. They cannot provide you with legal advice and should not be considered as your attorney. The Foundation and its legal counsel cannot provide tax advice.*

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This fact sheet is a public document and is provided for general information only. If you have a question about a specific law, regulation, or provision of the district agreement, option contract, or deed of easement, please consult legal counsel.

Last revision: September 24, 2008.



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<http://www.malpf.info/facts/fact04.pdf>